IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 844 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMJUBEN AAPBHAI BORICHA - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :

MR NIGAM R SHUKLA for Petitioner No(s).: 1.

MR KOGJE, Ld. APP for Respondent No(s).: 1.
None for Respondent No(s).: 2, 3,4.

==========

CORAM :HON'BLE MR.JUSTICE JAYANT PATEL

Date : 01/07/2005

ORAL JUDGMENT

1.Rule. Mr.Kogje, learned APP waives service of rule on behalf of the respondent State. With the consent of the parties, the matter is finally heard today.

2.The petitioner has preferred this petition for appropriate directions to appoint the commission comprising of Judicial Officer, Representative of any Voluntary Organization working in the field of Human Rights to inquire into the misdeeds and illegal actions of respondents No.2, 3 and 4 qua the petitioner and other lady members of the family and relatives and to submit the report within a stipulated time limit. The petitioner has also prayed to direct Respondents No.2, 3 and 4 to permit and allow the petitioner and other lady members of the family to stay and reside at their houses at Village Bhimdad, Taluka Gadhda and to allow to do all agricultural work and look after and maintain livestocks and live their lives without any torture and illegal actions taken by respondents No.2, 3, and 4 or any other police personnel. The petitioner has also prayed to award appropriate compensation to the petitioner and her family members for illegal action and for alleged violation of fundamental rights and human rights of the petitioner and family members.

3.Heard Mr.Shukla, learned Counsel for the petitioner and Mr.Kogje, learned APP for the State and State

Officers.

4. It has been submitted on behalf of the petitioner that in connection with the complaint filed against the male members of the family of the petitioner vide C.R. No.I-79/2005 under Section 302 of IPC and others, the police officers namely; Respondents No.2, 3, and 4 have harassed the petitioner and it has also been submitted that the other female family members were detained and the petitioner had to prefer Special Criminal Application No.772/2005 with this Court and in the meantime, the persons were set free by the Police and, therefore, the petitioner withdrew the proceedings of Special Criminal Application No.772/2005 on 17.6.2005 with a view to take appropriate action against the concerned person for claiming compensation etc. Mr.Shukla, learned Counsel for the petitioner submitted that the present petition is filed with a view to see that appropriate inquiry is ordered by this Court regarding illegal actions taken by the police personnel and also for the purpose to see that the petitioner and her family members can conveniently stay at their houses and can look after their agriculture and livestock. He also submitted during the course of the hearing that the investigation or the inquiry in connection with the aforesaid misdeed by the police personnel may be ordered to be conducted by some Judicial Officer or in

alternative, by any other agency of the State and, therefore, he submitted that appropriate directions may be issued by this Court.

5.Mr.Kogje, learned APP has submitted that the police should be at liberty to investigate into the matter in connection with the complaint under Section 302 in accordance with law and he has no objection if appropriate direction is given to see that the petitioner and her family members can conveniently stay at their residences and they can look after their agricultural work and livestock.

6.It appears that as such the petitioner had preferred Special Criminal Application No.772/2005 for the relief, inter alia, to direct the respondent for protection of Leelaben, Mankuba and Gulabben. However, additionally the prayer in the petition was also made to award compensation for illegal method adopted by Respondents No.2, 3 and 4 in ill-treating lady members, including the petitioner therein, who is also petitioner herein and other members of the petitioner's family and for their illegal detention in custody. When the Division Bench of this Court considered the matter on 17.6.2005 following order was passed by this Court (Coram: A.R.Dave and M.D.Shah, J.J.):

> *"Learned Advocate Shri Nigam Shukla appearing for the petitioner seeks permission to withdraw the application with a liberty to take appropriate action in accordance with law against the*

concerned persons for claiming compensation etc.

Permission for withdrawal of the application is granted. The application stands disposed of as withdrawn."

7. Therefore, the petition is withdrawn with a view to take appropriate action in accordance with law against the concerned person for claiming the compensation etc. Thereafter, the present petition is preferred by this Court for claiming compensation. It deserves to be recorded that the Division Bench, while passing the order on 17.6.2005 has not granted any express liberty to the petitioner to prefer another petition for compensation to this Court and, therefore, as such the present petition for claiming compensation cannot be said to be maintainable before this Court.

8. The petitioner in the very petition could have prayed for seeking appropriate direction for holding inquiry against the concerned Police Officers for giving any ill-treatment or for any illegal detention, if any. However, the petitioner has abandoned the said relief in the said petition and, therefore, the second petition for such purpose cannot be said as maintainable before this Court.

9. Since the language used is for appropriate action of claiming compensation, etc., the contention raised

by the learned Counsel for the petitioner is that the prayer could be made for the appropriate inquiry by any judicial officer or agency other than the District Superintendent of Police of Bhavnagar District but the same cannot be accepted because the communication dated 9.6.2005, which is produced in the present proceedings at Annexure “B” on page 27 was also produced and was pressed in the earlier proceedings.

10. In any event, the petitioner and her family members who are said to be the relatives of accused of the alleged offence under Section 302 of the IPC would be entitled to live in a peaceful manner at their residence and they would also be entitled to look after their agricultural work and their livestock for the maintenance of the family. It deserves to be recorded that the family members or relatives of the accused at the most can be asked to provide information, if any, regarding the whereabouts of the accused, but their lives and liberty cannot be put to jeopardy by the Investigating Officer or any other person connected with the investigation.

11. Apart from the above, it appears that the petitioner and majority of the family members are female members and there are infant child also. While even conducting investigation in connection with the whereabouts of the accused, strict provisions of the Code of Criminal Procedure is required to be observed by the Police Officer by maintaining the dignity of

female members of the family of the petitioner and it would the duty of the Investigating Officer or other person connected with the investigation to see that the petitioner or her family members are not harassed, in any manner, under the pretext of inquiry or investigation by transgressing the limits of law.

12. Therefore, it is declared that the petitioner and her family members shall be at liberty to reside at their houses at Village Bhimdad, Taluka Gadhda Swaminarayan, District Bhavnagar in a peaceful atmosphere and they would also be entitled to look after their agricultural work and their livestock and it is directed that the Investigating Officer or any other personnel working in connection with the investigation, including Respondents No.3 and 4 shall not create any obstruction and hindrance to the petitioner and her family members in residing at their aforesaid houses and in looking after the agricultural work and their livestock.

13. The Respondent No.2 shall ensure that the aforesaid direction of this Court is properly complied with by the concerned Police Officers, including Respondents No.3 and 4 herein.

The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Direct service is permitted.

1-7-2005 **(Jayant Patel, J.)**

vinod